IN THE

Supreme Court Of The United States

October Term, 1976

No. 76-1041

William Jessie Harris ..... *Petitioner*

V.

State of Arkansas ..... *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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CITATIONS

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The petitioner, William Jessie Harris, prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of Arkansas entered in this proceeding and its denial of a petition for rehearing entered on November 1, 1976.

OPINION BELOW

The opinion of the Supreme Court of Arkansas, reported at 260 Ark. 420, 540 S.W.2d 859 (1976), and the

order denying a rehearing appear in the appendix hereto.

JURISDICTION

The opinion of the Supreme Court of Arkansas was delivered on September 27, 1976. A petition for rehearing was denied on November 1, 1976, and this petition of certiorari was filed within ninety days. This Court's jurisdiction is invoked under 28 U.S.C. §1257 (3).

QUESTIONS PRESENTED

I.

WHETHER THE ADMISSION OF TESTIMONIAL EVIDENCE CONCERNING THE SEIZURE OR CONFISCATION OF CERTAIN PROPERTY FROM THE PETITIONER WITHOUT INTRODUCING SAID PROPERTY INTO EVIDENCE DENIED THE PETITIONER DUE PROCESS OF LAW.

II.

WHETHER THE PETITIONER WAS DENIED A FAIR TRIAL AND DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE CIRCUMSTANCES.

CONSTITUTIONAL PROVISIONS

I.

FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES:

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation."

II.

SIXTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

III.

FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The petitioner, William Jessie Harris, was charged with the crime of Robbery (Ark. Stat. Ann. §41-3601) by a felony information filed on January 22, 1975. Additionally, the information contained the allegation that the petitioner used a firearm in the commission of the robbery. (T. 2) A Bench Warrant was issued and served on the petitioner on January 22, 1975. (T. 3)

Sometime between 11:30 p.m. and midnight on January 21, 1975, the Scottish Inn Motel, Russellville, Arkansas, was robbed by a lone male, wearing a handkerchief or bandana over his face, and armed with a shotgun. (T. 110, 111) A sum of money in excess of $600.00, consisting of paper money and an undetermined number of quarters in rolls, was taken along with a bank bag containing the housekeeper's keys to the motel. (T. 112, 113) The lone motel attendant, who could not positively identify the petitioner at trial, was tied-up with the cord off an electric typewriter. The attendant freed himself within ten minutes and reported the robbery to the local police. (T. 114, 115)

A Pope County Deputy Sheriff had occasion to be in the vicinity of the Scottish Inn Motel at approximately 11:30 p.m. on the night in question. Subsequently, upon hearing the police radio broadcast of a robbery at the motel, the deputy reported having seen a 1968-1970, white over light tan, Ford automobile parked in the lot of the Scottish Inn Motel. (T. 121, 122)

Sergeant James Bollin of the Russellville Police Department was patrolling at approximately 11:40 p.m. when he received notification of the subject robbery. (T. 130) He also received a description of an automobile reported earlier by the deputy sheriff. Acting on that information, Sgt. Bollin proceeded to a trailer park in search of an automobile known to him to fit the description of the reported vehicle. Upon arriving at the trailer park, the officer discovered that the automobile for which he was looking had not been moved for several hours, since it was covered with frost. (T. 132, 133) As the officer was departing the trailer park, he observed the petitioner driving a vehicle similar to the one previously described. The petitioner pulled off the road and was attempting to turn around, when Officer Bollin drove up beside petitioner's vehicle so that the cars were headed in opposite directions. The officer testified that he immediately observed a shotgun, with the barrel in the floor and the stock leaning on the seat, and that petitioner reached for the gun. At this point, Sgt. Bollin drew his pistol and ordered the petitioner from the automobile. (T. 134, 135) The petitioner was placed under arrest and the officer recovered from the petitioner's person $667.00, consisting of paper money of various denominations and five rolls of quarters. He removed from the interior of petitioner's car a red money bag containing a key with an identification tag reading "Scottish Inn, Housekeeper". (T. 139, 140)

The petitioner retained counsel and various motions were filed. On January 28, 1975, the Circuit Judge entered an Order committing the petitioner to the

State Hospital for examination. (T. 4, 5) Although the record is silent as to the issuance of a search warrant in this case or the particulars concerning any searches which were conducted, petitioner filed a motion requesting the return of money and other items seized in a search (T. 6, 7), and the Court entered an Order to that effect. (T. 11) Petitioner's attorney filed a Motion For Bill of Particulars on February 11, 1975 (T. 8, 9), and the Prosecuting Attorney responded on December 4, 1975. (T. 26, 27)

On December 9, 1975, petitioner's counsel was granted permission to withdraw as attorney of record due to irreconcilable differences that had developed between counsel and petitioner on the manner in which the case would be tried. (T. 49, 50) Petitioner's new counsel moved for a continuance, which was denied by the Court. (T. 50, 51) Petitioner's new counsel renewed his motion for continuance the next morning, December 10, 1975, the date of the trial, and the motion was again denied by the Court. (T. 59) Trial was had on December 10, 1975, the State presenting its case in the form of testimony of the motel attendant, the aforementioned deputy sheriff, and the Russellville Police Sergeant. The only physical, real evidence presented by the State was the shotgun. (T. 142) The Appellant, testifying himself, and through various other witnesses in his behalf, offered evidence that he had been hunting with the shotgun on the day in question, and was some place other than the Scottish Inn Motel at the time and date of the robbery.

After the Court's instructions on the charge of robbery and employing a firearm during the commission of a robbery, the issue was submitted to the jury. (T. 229) After deliberating, the jury returned a verdict finding the petitioner guilty of robbery and fixing his punishment at five years, and assessing punishment of seven years for use of a firearm during the robbery. (T. 31, 237) Sentencing was had on the same day and the Court fixed punishment at five years on the robbery conviction and seven years on the use of a firearm, the sentences to run consecutively. (T. 239)

An appeal was taken to the Supreme Court of Arkansas raising, inter alia, the questions herein presented. The Supreme Court of Arkansas affirmed the judgment of the trial Court on September 27, 1976. 260 Ark. 420, 540 S.W.2d 859 (1976). A petition for rehearing was denied on November 1, 1976. (T. 252)

ARGUMENT FOR ALLOWANCE OF THE WRIT

During the arresting officer's testimony, he began to testify concerning the money and other articles taken from the petitioner, at which point counsel objected and the following occurred (T. 136):

> MR. PATE: If he testifys that there was a large sum of money on the defendant, that would tie him directly with the commission of the crime. I think the defendant would be entitled to notice of this in the Response to Motion for Bill of Particulars. In the Motion for a Bill of Particulars, we requested the substance of all testimony and anything relating to it.
>
> BY THE COURT: *You are not entitled to have the substance of all testimony. You are entitled to know what physical evidence will be offered.* If you are objecting because you were not told through the Bill of Particulars as to what this witness would testify to in Court, I'll overrule your objection. (Emphasis added).
>
> MR. STREETT: I don't think there can be any surprise claimed because *we don't intent* (*sic*) *to produce the money.* Normally there is a great delay between the trying of a case and the arrest and filing. We don't always keep the money. The defendant would have knowledge of whether any money was taken from him. In the information we complied with what we would put into evidence. I don't think the defense counsel can say that he is surprised by the mention of this money. (Emphasis added).

BY THE COURT: The objection is overruled.

The identity of the robber was the central issue in this case. The victim of the crime could not identify the petitioner as the robber (T. 114, 116), and the petitioner presented evidence that he was elsewhere at the time of the crime. The only evidence that connected the petitioner with the crime was the officer's testimony concerning the money, the red bank bag, and the key bearing an identification tag reading "Scottish Inn, Housekeeper", all of which were purportedly seized from petitioner. No attempt was made to introduce the incriminating articles and no explanation was offered why the articles could not be exhibited to defense counsel or the jury when they were presumably in the possession of the State. It can hardly be said that the evidence of these confiscated articles, if improperly admitted, was harmless error.

There are several cases in this jurisdiction wherein the Court allowed testimony concerning articles of personal property involved in a crime without requiring production of the tangible articles. *Swearingen v. State*, 251 Ark. 700, 474 S.W.2d 111 (1972); *Washington v. State*, 254 Ark. 121, 491 S.W.2d 594 (1973); *Maynard v. State*, 252 Ark. 657, 480 S.W.2d 353 (1971). However, plausible and justifiable reasons existed in those cases for the allowance of such testimony, e.g. witness was a private citizen, victim of the crime, stolen property was not recovered, or an eye-witness to the crime.

While it may be that the subject property could have been admitted into evidence as the object of a valid

search incident to a lawful arrest, there is latitude for a reasonable argument that the arresting officer lacked probable cause. While it may be said that defense counsel did not challenge the arrest or the search, this fact is more compelling reason that the conviction should be reversed on the totality of the proceedings. Trial counsel had only been retained the day prior to trial, and his motion for continuance had been denied. (This point will be developed further).

Petitioner's first counsel had requested and received an Order for a Bill of Particulars on February 11, 1975. The Bill of Particulars inquired about objects obtained from a search, the description of any and all evidence of every kind, and any and all facts or witnesses tending to prove the guilt or innocence of the defendant. (T. 8, 9) The State responded on December 4, 1975, just five days prior to trial, and indicated that no search warrant was issued in the case and that the only physical evidence to be introduced would be photographs of the premises and the shotgun. Could not this procedure cause defense counsel to fail to inquire into probable cause of the arrest and search since it would appear that no evidence had been obtained or would be introduced as a result of such actions?

It seems inherently and fundamentally unfair to allow the State to withhold information concerning the seizure of articles connected with a crime on the premises that the articles are not intended for introduction but only the testimony concerning same. Admittedly, it could cause economic burden upon a

victim to withhold his money for a long period of time just for introduction at trial, but there is no legitimate explanation or reason why an inexpensive bank bag and a motel key were not presented for inspection by the jury. It is not contended that the prosecutor in this case attempted to adduce evidence in the form of testimony which might have otherwise been inadmissible upon introduction of the articles, but that potential abuse is present in circumstances such as these. The effect on the defendant would be the same.

If mere testimony concerning the existence and identity of crime connected articles is competent and permissible in all situations and under all circumstances without legitimate, plausible explanation for their non-introduction, then it may appear that establishment of a chain of evidence, a foundation for the introduction of evidence, and the introduction of physical articles at trial serve little purpose other than bare legal formalities and "icing on the cake" for the jury.

II.

The petitioner earnestly contends that he was deprived of the effective assistance of counsel under the circumstances and denied a fair trial. This Court has enunciated the rule that an accused is entitled to have counsel appointed to represent him sufficiently in advance of trial to enable such counsel to have adequate time for consultation, complete investigation, and preparation for trial. *Powell v. State of Alabama*, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932).

Some authority maintains that the mere lateness of time at which counsel was appointed presents a prima facie case of prejudice to the accused and shifts the burden to the State to prove lack of prejudice. *U. S. ex rel. Mathis v. Rundle*, 394 F.2d 748 (3d Cir. 1968); *U. S. ex rel. Johnson v. Russell*, 309 F. Supp. 125 (D. C. Pa. 1970). However, the Court rejected the presumption doctrine established in *Mathis*, *supra*, but in so doing stated:

> We therefore overrule *Mathis* to the extent it adopted the presumption doctrine. In doing so we do not intend to minimize the strong inference of prejudice from the failure to appoint counsel until the day of trial or very shortly prior thereto. Adequate preparation for trial often may be a more important element in the effective assistance of counsel to which a defendant is entitled than the forensic skill exhibited in the courtroom. The careful investigation of a case and the thoughtful analysis of the information it yields may disclose evidence of which even the defendant is unaware and may suggest issues and tactics at trial which would otherwise not emerge. Our abandonment of the *Mathis* presumption therefore does not alter our recognition of the objective it was meant to achieve, nor does it reflect any lessening of our concern that counsel be appointed far enough in advance of trial to permit adequate investigation and preparation. *Moore v. U. S.*, 432 F.2d 730, 735. (3d Cir. 1970).

It now appears that the lateness of the retention of counsel is a factor to be considered along with the other attendant circumstances in determining adequacy

of counsel in each individual case. In the instant case, petitioner had obtained counsel of his choice. On December 9, 1975, the afternoon of the day preceding the trial, petitioner's first counsel appeared and requested to be withdrawn as counsel. (T. 45) Although it is apparent that the trial judge viewed the proceeding as a voluntary change of attorneys on the part of the petitioner, that position is directly refuted by counsel's statement and the Court's actions as appear in the following excerpt of the record. (The full text of the hearing is set out in the appendix hereto.)

> MR. SMITH: Your Honor, I would like for the record to state that this is not a case of a client of mine changing attorneys to delay his trial. There are some problems which have arisen, and which I'm not at liberty to reveal, but I do have some ethical standards that I would be violating if I did try the case in the manner in which he wants it to be tried, and the reason I'm presenting this to the Court is that I would like to make a record on it.
>
> BY THE COURT: Are you moving now to withdraw as his attorney?
>
> MR. SMITH: Your Honor, yes, sir. I'm asking permission to withdraw.
>
> BY THE COURT: Very well, your Motion will be granted.
>
> MR. PATE: Since Mr. Smith is withdrawing and isn't going to handle the case, it would be a burden on any attorney to prepare a case in one night before trial.

> BY THE COURT: I understand that, Mr. Pate, but that is Mr. Harris' problem. He has had plenty of time to get prepared. Robbery is a very serious charge and this occurred sometime back -- when? (T. 49, 50)

New counsel for the petitioner filed a formal, written Motion For Continuance (T. 28, 29) in which he submitted that, inter alia, petitioner had been notified of his trial date only five days previously, an irreconcilable conflict developed between petitioner and his attorney, lack of time to prepare for trial, and the location of defense witnesses. This Motion was denied the morning immediately prior to trial. (T. 59)

The trial judge attached great importance to the fact that two continuances had been previously granted and infers that they were obtained at petitioner's insistance. This inference is not entirely supported by the record. On September 15, 1975, apparently the first trial date, the case was continued for a mental examination of the petitioner. Although the State asserted that petitioner had obtained the order and failed to be examined (T. 40), the Committment Order, dated January 24, 1975, does not reflect the moving party (T. 4) and further appears that the State requested the examination prior to petitioner's retention of counsel and that the authorities had neglected to transport petitioner to the facility. (T. 41) There does not appear to any documentation concerning the second continuance other than comment by the Court and prosecutor to such effect. (T. 55, 57)

However, the past continuances are of little importance where a situation developed that new counsel was being thrust on the petitioner through no fault on his part. An assertion that petitioner was only seeking a delay is emphatically refuted, in addition to counsel's statement, by his innocent readiness to go to trial when questioned in that regard by the judge. (T. 49) Although petitioner said he knew of no reason why he should not go to trial the next morning, he, as a layman, cannot be charged with knowledge of whether or not his new attorney could be adequately prepared. It has been held that it is error to refuse a request for a continuance when counsel has withdrawn or been relieved shortly before trial and through no fault of the accused. *Lee v. U. S.*, 235 F.2d 219 (C.A.D.C. 1956); *Tinkel v. U. S.*, 254 F.2d 23 (8th Cir. 1958).

While it appears that some decisions regarding effective assistance of counsel may have been influenced or grounded on a review of the overwhelming evidence against an accused and possibly given rise to the notion that no attorney could have obtained a different result. Such is not the present case. The only evidence that could possibly have sustained the jury's verdict was the testimony concerning the money, bank bag, and motel key. When this scant evidence is viewed in the totality of the circumstances, it produces grave doubts that petitioner was provided with effective legal counsel.

No evidentiary hearing was had on the issue of assistance of counsel since this proceeding does not come by way of habeas corpus and therefore the trial record

provides the only insight into the matter. Petitioner submits that the truer sense of justice and fair play demands that a subjective and somewhat speculative standard of assistance of counsel apply to a situation like this, rather than a strict appraisal of whether adequate representation was provided. The question necessarily involves what might have been done in addition to what was done. It is one thing to say that an infantry platoon did a creditable job in assaulting the hill, but quite another thing to reflect on the manner and result of the performance had the platoon been furnished ammunition.

Petitioner's counsel was faced with a multitude of obstacles. He had less than twenty-four hours to prepare; the state only responded to the Bill of Particulars five days prior to trial and then no mention was made as to the evidence to be presented, (T. 26, 27), objection of surprise, possible mental incompetency issue, search and seizure question, probable cause for arrest, consultation with client and witnesses, procurement of witnesses, intoxication defense, varying descriptions of the suspect automobile (T. 121, 122, 123, 131, 132), and whatever other pressing matters the attorney may have had.

The complete and total effect of the chain of events was to deprive petitioner of his guaranteed right to effective assistance of counsel. The case of *U. S. v. Miller*, 508 F.2d 444 (7th Cir. 1974), is of great impact on the instant case. There the accused was denied effective counsel when counsel was appointed two days prior to

trial and the delay not attirbutable to the accused. At page 451 of that opinion it is stated:

> "In the present case, the motion for continuance was presented one day after counsel's appointment and one day prior to trial. We fail to see how counsel could have been expected to seek discovery, prepare jury instructions, interview prospective witnesses, research law, prepare his opening statement and summation, interview his client and perform the numerous other tasks and duties necessary to insure adequate representation by counsel."

CONCLUSION

For the reasons stated hereinabove, a Writ of Certiorari should issue to review the judgment and opinion of the Supreme Court of Arkansas.

Respectfully submitted,

JAMES A. NEAL
5927 "H" Street
Little Rock, Arkansas 72205

Counsel for Petitioner

APPENDIX

HARRIS V. STATE

DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT; September 27, 1976

For reversal of a robbery conviction -- with the use of a firearm, appellant William Jessie Harris raises the issues hereinafter discussed.

The record shows that the Scottish Inn Motel was robbed sometime between 11:30 p.m. and midnight on January 21, 1975, by a man brandishing a single shot shotgun. Taken in the robbery was some six hundred dollars in currency and some quarters. The robber also took a moneybag that contained the housekeeper's keys to the motel.

An investigator, Mike Goomeer, was dropping another officer off at the Scottish Inn around 11:30 p.m. to pick up his car. While there he noticed that nobody was at the office desk and that a Ford automobile described as 1968-1970 white over light tan was parked at an odd angle in a parking space away from the other automobiles. Based upon the information given by Mike Goomeer, Officer James Bolin arrested appellant at 12:10 a.m., some twenty minutes after the robbery was reported. Appellant at the time was driving a white over light olive green 1969 Ford. The automobile was fairly

dirty at the time. In the automobile the officers found $667.00 consisting of paper money and five rolls of quarters. The search also revealed a single shot shotgun loaded with single "O" buckshot and a red moneybag containing a bronze key attached to an identification tag reading "Scottish Inn Housekeeper." Mike Goomeer identified the automobile driven by appellant as the car he had previously observed at the Scottish Inn.

As can be seen from the foregoing summary of the evidence, we can find no merit to appellant's suggestion that there was no substantial evidence to support the jury's verdict.

The contention of appellant that the trial court erred in admitting evidence concerning property seized from appellant without introducing the property has no merit. See *Swearingen v. State*, 251 Ark. 700, 474 S.W.2d 111 (1971) and *Maynard v. State*, 252 Ark. 657, 480 S.W.2d 353 (1972).

Neither can we find any merit to appellant's contention that he was denied the effective assistance of counsel because of the trial court's refusal to grant a continuance. The record shows that through his retained counsel he had previously obtained two continuances. On the day before trial he switched counsel and asked for another continuance. Obviously a trial court does not abuse its discretion in denying a continuance in such instances. Any other rule would permit a defendant to get successive continuances so long as he had the money to hire a new lawyer for each court setting.

LAW OR CHANCERY MANDATE

STATE OF ARKANSAS)
) SCT.
In the Supreme Court)

BE IT REMEMBERED, That at a term of the Supreme Court of the State of Arkansas, begun and held at the Court Room in the City of Little Rock, on the 4th day, being the first Monday of October, A. D. 1976, amongst others were the following proceedings, to-wit:

On the 1st day of November, A.D. 1976, a day of said term, William Jessie Harris
Appellant)
)
No. CR 76-100)Appeal from Pope Circuit Court
)
State of Arkansas)
Appellee)

Rehearing denied.

IN THE CIRCUIT COURT OF
POPE COUNTY, ARKANSAS

STATE OF ARKANSAS PLAINTIFF

VS. NO. CR 75-30

WILLIAM JESSIE HARRIS DEFENDANT

Hearing on Motion for Continuance and Motion to Withdraw as Counsel, before the Honorable John Lineberger, Judge of the Fourth Judicial Circuit, Second Division, on assignment to the Fifth Judicial Circuit by the Supreme Court of the State of Arkansas, December 9th, 1975.

APPEARANCES:

Mr. William F. Smith
Attorney at Law
Russellville, Arkansas

Mr. James R. Pate
Attorney at Law
Russellville, Arkansas — for Defendant

Mr. Alex G. Streett
Prosecuting Attorney
Russellville, Arkansas — for Plaintiff

BY THE COURT:

Q. You are William Jessie Harris; is that correct?

A. Yes, sir.

Q. Mr. Harris, you are charged with the offense of armed robbery, and your case was set for trial for this week?

A. Yes, sir.

Q. You have been aware of that for some time; haven't you?

A. Yes, I have.

Q. Now, I understand from Mr. Smith that you have decided that you want to change attorneys now; is that correct?

A. That is true, Your Honor.

Q. Have you hired Mr. Pate now to represent you?

A. Yes, sir.

Q. And you've told Mr. Smith that he is relieved from further duties as far as you are concerned?

A. Yes, sir.

Mr. Page, can you be ready to go by tomorrow morning?

MR. PATE: Your Honor, I have not accepted him as a client. I told him that I would represent him provided the Court would give us a continuance in this case. If he is to go to trial tomorrow, it has been my advice to him that Mr. Smith represent him. He is familiar with the case. I haven't read the file and have only had one brief meeting with Mr.. Harris this morning, and there looks like there might be some motions that need to be filed

-- I don't know if they have been filed, and there is another witness that we would need to call and he doesn't know her whereabouts right now. I don't know all of the ramifications of the breakdown between him and Mr. Smith, but it was centered around how the defense was to be handled.

BY THE COURT:

Q. Mr. Harris, I set this case for trial once before?

A. Yes, you did.

Q. This was in October or September?

MR. SMITH: In October.

BY THE COURT:

Q. At that time Mr. Smith filed a Motion asking for a continuance based on the grounds that you wanted to be examined by a psychiatrist, I believe?

A. That's true.

Q. Do you recall that?

A. Yes, sir.

Q. And I believe there was an Order entered to that effect. At that time I continued the case for you to be examined, back in October. Now, did you see a psychiatrist?

A. Yes, I did.

Q. So you've gotten all of that out of the way?

A. Well, we haven't gotten the report back.

Q. When did you go back to him?

A. Last week -- last Thursday.

Q. Last week?

MR. SHERMER: I spoke with the psychiatrist a few moments ago and they have a letter that they are typing now, which will be delivered to us this afternoon. They read me the letter and the essence of it is that he is without psychosis.

BY THE COURT: Well, I don't want to hear anything now about what the substance of it is.

Q. Why did you wait around all this time about seeing a psychiatrist?

A. I was waiting on my attorney. He was supposed to make an appointment for me. The appointment wasn't made.

Q. Do you know of any reason why you shouldn't be tried tomorrow?

A. No, Your Honor.

Q. Your case will be tried in the morning at nine o'clock Now you're entitled to have whatever lawyer you want to represent you. You are free to hire whomever you want, but I will try the case in the morning at nine. It is up to these lawyers as to whether they want to take the case or don't want to. I think you have had adequate time to prepare for trial and to advise your attorney, whoever it may be, of the details in order for them to prepare your defense. I want you here in the morning at nine o'clock, ready for trial.

MR. SMITH: Your Honor, I would like for the record to state that this is not a case of a client of mine changing attorneys to delay his trial. There are some problems which have arisen, and which I'm not at liberty to reveal, but I do have some ethical standards that I would be violating if I did try the case in the manner in which he wants it to be tried, and the reason I'm presenting this to the Court is that I would like to make a record on it.

BY THE COURT: Are you moving now to withdraw as his attorney?

MR. SMITH: Your Honor, yes, sir. I'm asking permission to withdraw.

BY THE COURT: Very well, your Motion will be granted.

MR. PATE: Since Mr. Smith is withdrawing and isn't going to handle the case, it would be a

burden on any attorney to prepare a case in one night before trial.

BY THE COURT: I understand that, Mr. Pate, but that is Mr. Harris' problem. He had had plenty of time to get prepared. Robbery is a very serious charge and this occurred sometime back -- when?

MR. STREETT: January.

BY THE COURT:

Q. January? You have had nearly a full year to get a lawyer and get prepared. The case was set for trial and was continued at your request. Now, I've set it for trial again and you've known for some time that it was going to be tried this week; haven't you?

A. Yes, sir. I've known since Friday, Your Honor.

Q. At any rate, I think it is your own fault that you haven't gotten busy and gotten other counsel, if you didn't want Mr. Smith representing you.

A. Your Honor, I didn't know at that time that I didn't want him.

MR. STREETT: I would like to call the Court's attention to the fact that defense counsel

requested and an Order was entered that the defendant be transferred to the State Hospital to be examined by a psychiatrist, and that the Sheriff deliver him. At the defendant's request the Sheriff didn't take him down, and it was at that time that a delay was granted from the original trial setting when it was brought to the Court's attention that the defendant hadn't had the examination. The failure of not having the examination was occasioned by the defendant, through his attorney, in telling the Sheriff not to take him even though we had an Order subsequent to that. At the defendant's request the examination, that he requested, was allowed and the defendant was released on bond. The defendant was told to make an appointment with the Mental Health Clinic and that has been done and the report is ready. We would submit that even though the delay isn't being occasioned by the attorney, we feel it is intentional on the part of the defendant to prevent his case being tried. We do ask that it be tried tomorrow as set.

BY THE COURT: I'm going to add further, for the record, I think Mr. Smith has been very diligent in your behalf, because he wrote me last week for another Order in an attempt to get you examined, and I refused to sign another Order because you refused to go before when an Order had been entered. If you want to be examined, you're entitled to go out and get whatever doctor you want to examine you, but you had better not

come to this Court and ask this Court to appoint a doctor to examine you and then you fail to show up, and then turn around just before trial asking the same favor again in an effort to delay your trial. Mr. Pate, as far as your remarks to start with, I'm not suggenting that you have to accept the case. That is between you and Mr. Harris. I simply want Mr. Harris to know that we expect him here in the morning at nine o'clock. That's all.